



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inter partes Application of:
Tomassi

Examiner: **G. O. Crawford**

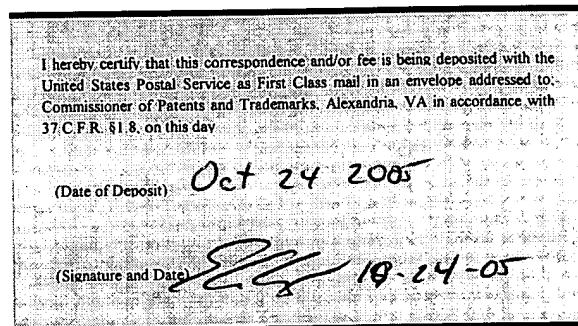
Group Art Unit: **3651**

Serial No.: **10/764,917**

Date: **October 24, 2005**

Filed: **January 16, 2004**

**For: VENDING SYSTEM HAVING
BIOMETRIC VERIFICATION PROTOCOLS
FOR USER VERIFICATION**



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Commissioner of Patents and Trademarks

APPEAL BRIEF OF APPELLANT

Sir:

The Applicant having filed a Notice Of Appeal for the above-captioned application, herein timely files this Appeals Brief in accordance with 37 C.F.R. 41 et seq.

I. REAL PARTY IN INTEREST [37 CFR §41.37(c)(1)]

The subject application is not assigned. As such, the Real Party in Interest is the Applicant.

II. RELATED APPEALS AND INTERFERENCES [37 CFR §41.37(c)(2)]

No other related application is currently subject to an Appeal or Interference.

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III. STATUS OF CLAIMS [37 CFR §41.37(c)(3)]

The status of the pending claims is as follows

Claims 1- 14 are pending in this application.

Claims 1 - 14 stand as finally rejected by the Examiner.

Claims 1 - 14 are the appealed claims.

IV. STATUS OF THE AMENDMENTS [37 CFR §41.37(c)(4)]

The amendment filed by the Applicant on May 09, 2005 was entered by the Examiner. No other amendments were filed.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER [37 CFR §41.37(c)(5)]

The rejected claims include three independent claims, which are Claim 1, Claim 7 and Claim 11.

Claim 1 sets forth a method of permitting only authorized users to use an automated vending machine. (*See preamble of Claim 1*) This allows regulated products, such as tobacco, alcohol and adult products to be safely sold from vending machines, without concern of purchases by minors. (*See Specification, page 7, lines 2-12*)

The claimed method includes providing authorized users with identification cards (20, *Fig. 1*). Each identification card (20) contains a digital data code corresponding both to the identity of the authorized user and a biometric characteristic of the authorized user. (*See Specification, page 9, lines 17-24*) Vending machines (10, *Fig. 1*) are provided that contain both an identification card reading device (16, *Fig. 1*) and a biometric characteristic scanner (18, *Fig. 1*). The vending machine (10) reads the digital data code from an identification card (20) inserted into the identification card reading device (16) on the vending machine (10). (*See Fig. 3, Block 44 and 46, also Specification, page 11, lines 13-20*) The vending machine (10) also scans an

actual biometric characteristic directly from the potential user using the biometric characteristic scanner (18) on the vending machine (10). *(See Fig. 3, Block 48 and Specification, page 12, lines 4-11)*

Once the vending machine (10) has both read the data from the identification card (20) and has read an actual biometric characteristic from the potential user, the information is compared. *(See Fig. 3, Block 52, and Specification, page 12, lines 19-24)* The vending machine (10) is enabled only if the actual biometric characteristic of the potential user matches the digital data code of a biometric characteristic contained on the identification card (20). *(See Fig. 3, Block 54, and Specification, page 13, lines 8-14)*

Claim 7 sets forth a vending machine for vending regulated products. *(See preamble of Claim 7)* The vending machine (10) has both an identification card reader (16) for reading an identification card (20), and a biometric characteristic scanner (18) for reading actual biometric characteristic data from a person standing in front of the vending machine (10). *(See Summary Of The Invention, 2nd and 3rd paragraphs.)*

The vending machine (10) vends the regulated products only after a proper fee has been deposited and data read from the identification card is matched to the actual biometric characteristic data read by said biometric characteristic scanner. *(See Fig. 3, Block 40, Block 54, and Specification, page 13, lines 8-14)*

Claim 11 sets forth a vending system. *(See preamble of Claim 11)* The vending system includes at least one vending machine (10) having a card reader (16) for reading identification cards (20) and a biometric characteristic scanner (18) for ascertaining an actual biometric characteristic of a person using the vending machine (10). *(See Summary Of The Invention)* The vending machine (10) compares the actual biometric characteristic of the person using the

vending machine to a digital data code on the identification card and vends product only when there is a match. *(See Fig. 3, Block 54, and Specification, page 13, lines 8-14)*

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL [37 CFR §41.37(c)(6)]

The grounds of rejection to be reviewed on appeal are as follows:

1. - Claims 1- 14 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent No. 6,615,191 to Seeley.

VII. ARGUMENTS. [37 CFR §41.37(c)(7)]

GROUND 1 - Whether the Examiner erred in finally rejecting Claims 1- 14 under 35 USC 102(e) as being anticipated by U.S. Patent No. 6,615,191 to Seeley.

The rejected claims include three independent claims, which are Claim 1, Claim 7 and Claim 11. These claims are believed to be clearly distinguishable over the cited prior art references, as is explained below.

Claim 1

Claim 1 sets forth a method of permitting only authorized users to use an automated vending machine. This allows regulated products, such as tobacco, alcohol and adult products to be safely sold from vending machines, without concern of purchases by minors.

The claimed method includes providing authorized users with identification cards. Each identification card contains a digital data code corresponding both to the identity of the

authorized user and a biometric characteristic of the authorized user. Vending machines are provided that contain both an identification card reading device and a biometric characteristic scanner. The vending machine reads the digital data code from an identification card inserted into the identification card reading device on the vending machine. The vending machine also scans an actual biometric characteristic directly from the potential user using the biometric characteristic scanner on the vending machine.

Once the vending machine has both read the data from the identification card and has read an actual biometric characteristic from the potential user, the information is compared. The vending machine is enabled if the actual biometric characteristic of the potential user matches the digital data code of a biometric characteristic contained on the identification card.

The Seeley patent is entitled “*Software Licensing And Distribution Systems And Methods Employing Biometric Sample Authorization*”. As the title implies, the Seeley patent discloses a methodology for licensing software and ensuring that the person using the software is the same person who licensed the software.

The Seeley patent discloses a method of licensing software. The Seeley patent does disclose that the software can be downloaded, sold from a retainer or sold from a vending machine. The Seeley patent also discloses that in order to buy the software, the user must register some biometric identification parameter. Consequently, at the point of purchase, a person must either be scanned or present a smart card that already contains information of a biometric identification
See Seeley Column 5, lines 55-60.

Once a customer is scanned, that biometric information is stored in a “biometric

information storage". *See Seeley column 6, lines 38-40*. The customer can then take the licensed software. When the customer runs the software, the customer is again scanned for a biometric parameter at the point where the software is being used. If the user scan matches the purchaser scan, the software will run since it is being used by an authorized user. Thus, it will be understood that the purpose of the biometric scan when the software is purchased is to obtain data that can be verified when the software is brought home and used. The sale is not dependent upon the biometric data, but the authorization to later run the software is.

The present invention and the Seeley patent does disclose vending machines and biometric scanners. However, the methodology that employs these components is completely different. Although some small similarities exist between the Seeley methodology and that of the present invention, the differences are large and clear. Claim 1 of the present invention specifically sets forth a method of permitting only authorized users to use an automated vending machine. *See preamble of Claim 1*.

The Seeley patent allows **anyone** to buy software from a vending machine at any time. The vending machine works for anyone with money. The Seeley patent only address the use of the software by authorized people after it is purchased from a vending machine and taken home.

Claim 1 of the present invention sets forth a vending machine that :

1. reads a digital data code from an identification card;
2. scans actual biometric characteristics directly from a person using the vending; and
3. compares the actual biometric characteristic to the digital data code contained on the identification card, before enabling the vending machine.

The Seeley patent does not use or suggest these method steps. In the Seeley patent, a vending

machine registers a user by either reading a biometric characteristic from an identification card **OR** scanning an actual biometric characteristic from a person using the vending machine. The vending machine referenced in the Seeley patent only wants to register a biometric characteristic of the person purchasing the software from a vending machine. The Seeley patent does not attempt to verify that biometric characteristic until a user takes the software home and attempts to use the software. The Seeley patent does not use any biometric comparison to activate a vending machine.

In fact, the vending machine referenced in the Seeley patent will sell the software without any registration of a biometric characteristic. However, more money is charged for the software. This is a key feature of the Seeley patent ,as evidenced by the first paragraph of Claim 1 of the Seeley patent, is the step of:

“presenting a selection of payment choices including at least one choice involving access based on biometric identification and at least one choice involving access without biometric identification;”

It will therefore be understood that the Seeley patent does not disclose a system or method where a vending machine is enabled only if an actual biometric characteristic of a potential user matches the digital data code of a biometric characteristic contained on an identification card read by the vending machine.

Since the method step of comparing data to enable the vending machine is specifically set forth in Claim 1 and is not disclosed in the Seeley patent, it is clear that the Seeley patent does not anticipate the matter of Claim 1.

It is therefore believed that the matter of Claim 1 is distinguishable over the Seeley patent. It is therefore respectfully requested that the 35 USC 102 rejection as applied to Claim 1 and its dependent claims be withdrawn.

Claim 7

Claim 7 sets forth a vending machine for vending regulated products. The vending machine has both an identification card reader for reading an identification card, and a biometric characteristic scanner for reading actual biometric characteristic data from a person standing in front of the vending machine.

The vending machine vends the regulated products only after a proper fee has been deposited and data read from the identification card is matched to the actual biometric characteristic data read by said biometric characteristic scanner.

As has been previously mentioned, the Seeley patent does not disclose a vending machine that is enabled or disabled in any way. In the Seeley patent, the referenced vending machine will vend to anyone who pays. The vending price is cheaper if you register a biometric characteristic, but the vending machine is always operational.

The present invention claims a vending machine that can only be enabled upon the comparing of a data card to an actual biometric scan performed at the vending machine. Since such a vending machine is not disclosed in the Seeley patent, the Seeley patent fails to disclose the matter contained in Claim 7.

It is therefore believed that the matter of Claim 7 is distinguishable over the Seeley patent. It is therefore respectfully requested that the 35 USC 102 rejection as applied to Claim 7 and its dependent claims be withdrawn.

Claim 11

Claim 11 sets forth a vending system. The vending system includes at least one vending

machine having a card reader for reading identification cards and a biometric characteristic scanner for ascertaining an actual biometric characteristic of a person using the vending machine. The vending machine compares the actual biometric characteristic of the person using the vending machine to a digital data code on the identification card and vends product only when there is a match.

As has been previously mentioned, the Seeley patent does not disclose a vending machine that is enabled or disabled. In the Seeley patent, the reference vending machine will vend to anyone who pays. The vending price is cheaper if you register a biometric characteristic. But the vending machine is always operational.

The present invention claims a vending machine that can only be enabled upon the comparing of a data card to an actual biometric scan performed at the vending machine. Since such a vending machine is not disclosed in the Seeley patent, the Seeley patent fails to disclose the matter contained in Claim 11.

It is therefore believed that the matter of Claim 11 is distinguishable over the Seeley patent. It is therefore respectfully requested that the 35 USC 102 rejection as applied to Claim 7 and its dependent claims be withdrawn.

CONCLUSION

The Applicant's brief is believed to be in full compliance with 37 C.F.R. §41.37 et seq. The Examiner's 35 U.S.C. §102 rejections are not supported by the cited references. The Board is therefore requested to cause the Examiner to remove the rejections and allow the remaining pending claims.

~~Respectfully Submitted,~~

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VIII. CLAIMS APPENDIX [37 CFR 41.47(c)(8)].

The pending claims stand as follows:

1. A method of permitting only authorized users to use an automated vending machine, comprising the steps of:

providing each of the authorized users with an identification card that contains a digital data code corresponding both to the identity of the authorized user and a biometric characteristic of the authorized user;

providing a vending machine having an identification card reading device and a biometric characteristic scanner;

reading said digital data code from an identification card inserted into said identification card reading device in said vending machine by a potential user;

scanning an actual biometric characteristic directly from the potential user using said biometric characteristic scanner;

comparing the actual biometric characteristic of the potential user to the digital data code of said biometric characteristic contained on said identification card; and

enabling the vending machine if the actual biometric characteristic of the potential user matches the digital data code of said biometric characteristic contained

on said identification card and if said digital data code on said identification card indicates that the potential user is authorized.

2. The method according to Claim 1, wherein said biometric characteristic scanner is selected from a group consisting of fingerprint scanners, palm print scanners, retina scanners, knuckle scanners and voice print scanners.

3. The method according to Claim 1, further including the step of providing the vending machine with a money validation system for receiving and validating money from the potential user.

4. The method according to Claim 3, further including the step of enabling the vending machine only after the potential user has deposited a predetermined fee into said money validation system.

5. The method according to Claim 1, wherein said vending machine vends a product that can only be sold to potential users over a predetermined age.

6. The method according to Claim 1, wherein said vending machine vends prepurchased products that are to be dispensed

only to a potential user who prepurchased the product.

7. A vending machine for vending regulated products, said vending machine comprising:

- a money validation unit for receiving and validating money;

- an identification card reader for reading an identification card;

- a biometric characteristic scanner for reading actual biometric characteristic data from a person standing in front of the vending machine;

- a systems controller for enabling said vending machine to vend the regulated products only after a proper fee has been deposited into the money validation unit and data read from said identification card is matched to said actual biometric characteristic data read by said biometric characteristic scanner.

8. The vending machine according to Claim 7, wherein said biometric characteristic scanner is selected from a group consisting of fingerprint scanners, palm print scanners, retina scanners, knuckle scanners and voice recognition scanners.

9. The method according to Claim 7, wherein said vending

machine vends a product that can only be sold to potential users over a predetermined age.

10. The method according to Claim 7, wherein said vending machine vends prepurchased products that are to be dispensed only to a potential user who prepurchased the product.

11. A vending system, comprising:

identification cards distributed to authorized persons, wherein each identification card contains a digital data code regarding a biometric characteristic that is unique to the owner of that identification card;

at least one vending machine having a card reader for reading said identification cards and a biometric characteristic scanner for ascertaining an actual biometric characteristic of a person using the vending machine, wherein the vending machine compares the actual biometric characteristic of the person using the vending machine to said digital data code on said identification card and vends product only when there is a match.

12. The system according to Claim 11, wherein said biometric characteristic scanner is selected from a group consisting of fingerprint scanners, palm print scanners, retina scanners, knuckle scanners and voice recognition

scanners.

13. The system according to Claim 11, wherein said vending machine vends a product that can only be sold to potential users over a predetermined age.

14. The system according to Claim 11, wherein said vending machine vends prepurchased products that are to be dispensed only to a potential user who prepurchased the product.

IX. EVIDENCE APPENDIX [37 CFR 41.37(c)(1)(ix)].

There is no evidence submitted under 37 CFR 1.130, 1.131 or 1.132 or any other evidence relied upon by the applicant

X. RELATED DECISION APPENDIX [37 CFR 41.37(c)(1)(x)].

There are no decisions by a court or the Board relevant to this appeal.